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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/044,246	04/17/95	NO NAME	1503 1575

13M1/1115

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EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 11/15/96

Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 23

Serial Number: 08/044,240

Filing Date: 04/07/93

Appellant(s): MICHAEL McHALE, GEORGE NICHTULA, CHRISTINE L.
CORRIVEAU, WILLIAM J. WOKAS

Maxwell J. Petersen
For Appellant

Mailed
11/15/96
Group 1300

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to appellants' reply brief filed 09/09/96, which has been entered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.

Appellants make several points to which the Examiner maintains his position as set forth in the Examiner's Answer. These points are contained in sections I, II and III of the reply brief.

With respect to section IV, the Examiner would point out that Appellants have again relied on unsupported assertions to

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argue their case. Specifically, Appellants state that "[i]t is apparent from Fig. 2 that the first mass contains the second mass on three sides so that the second mass cannot run or leak through the product, before the product is cooled and the masses harden. This permits great versatility in the selection of the second mass." (See page 6, second full paragraph of Reply Brief).

First, it is considered that, upon viewing Fig. 2 and its associated specfical disclosure (beginning on page 5, line 17), the figure does not inherently or otherwise teach the above assertion. Secondly, no basis for this assertion was found in the remaining portions of the specification. As an aside, its placement into the specification would be considered new matter.

Appellants seem to assert that the specification inherently teaches the above quoted performance characteristics of the instant product because the specification teaches the use of several compositions of which the second mass can be comprised. What Appellants fail to teach is what the temperature profiles of the second masses are as the chewing gum proceeds down the assembly line. Further, the specification does not teach a cooling step to harden the masses or for any reason. Further

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yet, several of the chewing gum product designs are cut (see Figs. 1, 4 and 5) so as to expose the second mass to view on the side of the gum and it is considered that if the instant gum is incapable of being produced satisfactorily without the asserted cooling step (before cutting the gum) due to the fact that the second mass will 'run off' of the first mass then it might be asserted that the specification is defective with respect to the newly asserted point.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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November 13, 1996

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